

DAVID BURCHARD
CHAPTER 13 TRUSTEE
P.O. BOX 8059
FOSTER CITY, CA 94404
(650) 345-7801 FAX (650) 345-1514
(707) 544-5500 FAX (707) 544-0475

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

DAVID ROGER GAUDRY
356 MADRONE
LARKSPUR, CA 94939

###-##-0193

Debtor(s)

Chapter 13
Case No: 12-3-2811 DM
Date: May 15, 2013
Time: 01:40 PM
Cttrm: 235 PINE STREET, 22nd FLOOR
SAN FRANCISCO, CA 94104-

**MOTION OF CHAPTER 13 TRUSTEE, DAVID BURCHARD,
TO DISMISS CASE PRIOR TO CONFIRMATION**

TO: THE ABOVE-NAMED DEBTOR(S) AND TO DEBTOR(S)' ATTORNEY OF RECORD HEREIN:

The Chapter 13 Trustee, DAVID BURCHARD, moves the Court for an order, dismissing this case for cause(s) for the reasons set forth below.

1. This Court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014, and Bankruptcy Local Rules 9013-1 and 9014-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. This Motion is based upon all documents and records on file, together with this Motion, Declaration and any such additional documents, records and evidence which may be presented.
3. Debtor(s) filed for bankruptcy under Chapter 13 on 10/02/2012.
4. This motion for dismissal is made for cause pursuant to:
11 U.S.C. § 1307(c)(1) as there is unreasonable delay that is prejudicial to creditors.
5. The cause to dismiss this case exists as it is in the best interests of creditors and the bankruptcy estate. The Trustee therefore requests the Court enter an order dismissing this case.

If you wish to oppose dismissal of this Chapter 13 case, you or your attorney must file a timely opposition to this motion no later than fourteen (14) days before the hearing set forth in the accompanying Notice of Motion. You or your attorney must also appear at the hearing date listed in the notice and present argument in opposition to this motion.

DATED: April 15, 2013

DAVID BURCHARD
DAVID BURCHARD, Chapter 13 Trustee

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**DECLARATION IN SUPPORT OF CHAPTER 13 TRUSTEE,
DAVID BURCHARD'S, MOTION TO DISMISS CASE
PRIOR TO CONFIRMATION
AND CERTIFICATE OF MAILING**

I am the custodian and/or keeper of the business records referenced herein and, as such, I am qualified to certify the authenticity thereof. Additionally, I have personal knowledge of the matters stated in the Declaration. If called upon as a witness, I could, and would, competently testify to the facts contained herein.

After reviewing the books, records and files of the above-referenced Debtor(s), I make the following Declarations:

1. Debtor(s) filed the instant bankruptcy petition on 10/02/2012. There is unreasonable delay towards plan confirmation that is prejudicial to creditors.
2. As of the date hereof, the following fact(s) exists as cause for dismissal:

_____	Failure to make required payments to the Trustee. \$ _____ is in default under Ch. 13 Plan.
_____	Failure to attend Section 341 Meeting of Creditors scheduled on _____
<u> X </u>	Failure to respond to Trustee's requests – see attachment "A".

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on April 15, 2013 in Foster City, California.

Dated: April 15, 2013

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

CERTIFICATE OF MAILING

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 393 Vintage Park Drive, Suite #150, Foster City, CA. On the date set forth below, I served a true and correct copy of the **Motion** of Chapter 13 Trustee, David Burchard, to Dismiss Case Prior to Confirmation, the **Declaration** in Support of Chapter 13 Trustee, David Burchard's Motion to Dismiss Case Prior to Confirmation and **Certificate of Mailing**, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DAVID ROGER GAUDRY
356 MADRONE
LARKSPUR, CA 94939

JOHN A VOS
1430 LINCOLN AVE
SAN RAFAEL, CA 94901-0000

Dated: April 15, 2013

BRAMIREZ

BRAMIREZ
Case Administrator

DAVID BURCHARD
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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

DAVID ROGER GAUDRY
356 MADRONE
LARKSPUR, CA 94939

###-##-0193

Debtor(s)

Case No.: 12-3-2811 DM
Chapter 13

ATTACHMENT "A"

The Trustee made the following requests at least 30 days prior to the filing date of the instant motion:

1. Trustee is in receipt of objection to confirmation of plan by creditor, U.S. Bank National Association, filed on October 24, 2012. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. Debtor has failed to resolve said objection.
2. Trustee is in receipt of objection to confirmation of plan by creditor, San Francisco Federal Credit Union, filed on December 20, 2012. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. Debtor has failed to resolve said objection.
3. Debtor has listed the intention to avoid the lien of Chase Home Finance in paragraph 12 of the Plan. Trustee requested that the debtor file and resolve said motion prior to confirmation. Debtor has failed to resolve said motion.
4. Debtor has listed the "Local Standards: housing and utilities; mortgage/rental expenses" of \$3,228.00 in question 25B on Form B22C, while not deducting the "Average Monthly Payment for any debts secured by home, if any, as stated in question 47" of \$4,267.46. This would leave a "Net mortgage/rental expense" in line 25B of \$00.00. Trustee requested an amended Form B22C which provides for the secured deductions as required in question 25B, section b. Debtor has failed to file an amended Form B22C.
5. Schedule A lists the secured claim amount as \$241,464.38 for the property located at 356 Madrone, Larkspur, CA; Schedule D reflects secured claims in the amount of \$1,033,680.15. Trustee requested amended documents which accurately reflect the amount of the claims against the property. Debtor has failed to amend the appropriate documents for accuracy and consistency.

6. The information provided in question 11 of the Statement of Financial Affairs is incomplete. Trustee requested an amended Statement of Financial Affairs which provides complete answers to this question. Debtor has failed to file an amended statement of financial affairs.